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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : Bilibin, Paul et al.
Application No. : 09/684,861
Filed : October 6, 2000
Title : Apparatus, Systems and Methods for Determining Delivery
Time Schedules for Each of Multiple Carriers
Technology Center : 3600
Grp./Div. : 3623
Examiner : Van Doren, Beth
Docket No. : PSTM0024/MRK

APPELLANT'S REPLY BRIEF TRANSMITTAL LETTER

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

140 S. Lake Ave., Suite 312
Pasadena, CA 91101-4710
January 23, 2007

Commissioner:

Enclosed are the following:

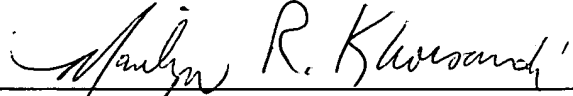
1. Appellant's Reply Brief (19 pages); and
2. Return post card.

It is respectfully submitted that the enclosed Appellant's Reply Brief is timely filed because it is filed in accordance with 37 C.F.R. §41.41(a)(1) prior to the expiration of January 29, 2007, which is the ending date of the two month period following the November 29, 2006 date of the Examiner's Answer.

Even so, the Commissioner is hereby authorized, pursuant to 37 CFR 1.136(a)(3), to treat any concurrent or future reply or correspondence for the above-identified application, requiring a petition for an extension of time for its timely submission, as incorporating a constructive petition for extension of time for the appropriate length of time. The Commissioner is hereby authorized to charge any fees under 37 CFR 1.16 and 1.17, including any required extension fees, which may be

required during the **pendency** of this application, to Deposit Account No. 501574. Please show our docket number with any charge or credit to our Deposit Account. **A copy of this letter is enclosed.**

Respectfully submitted,
KHORSANDI PATENT LAW GROUP, ALC

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MRK/aa
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PATENT

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APPELLANT'S REPLY BRIEF

This is a Reply to the Examiner's Answer, dated November 29, 2006, regarding the pending Appeal of the rejection of Claims 1-13, 15-17 and 19-23 in the case of the above-identified application.

An Oral Hearing is not requested.

It is respectfully submitted that this Reply Brief is timely filed because it is filed in accordance with 37 C.F.R. §41.41(a)(1) prior to the expiration of January 29, 2007, which is the ending date of the two month period following the November 29, 2006 date of the Examiner's Answer.

TABLE OF CONTENTS

REPLY ARGUMENT	3
----------------------	---

<u>Issue 1 Reply Argument Regarding the Rejection of Claims 1-13, 15-17 and 19-23 Under Section 103(a) as being Unpatentable over Thiel in view of FedEx: There is no Disclosure, Teaching or Suggestion Found in the Prior Art to Combine the FedEx and Thiel References</u>	3
---	---

<u>Issue 1a Reply Argument Regarding the Rejection of Independent Claims 1, 4, and 7, and Dependent Claims 17, 22 and 23 Under Section 103(a) as Being Unpatentable over Thiel in view of FedEx: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Determining a Cross-Comparison Delivery Schedule Comprising Delivery Schedules for Each Service for Each Carrier Wherein Each Delivery Schedule Comprises a Delivery Date and a Delivery Time</u>	9
--	---

<u>Issue 1b Reply Argument Regarding the Rejection of Dependent Claims 2, 5, 8, and 15: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Calculating a Shipping Rate for Each Delivery Service Offered by Each Carrier to Ship a Particular Parcel</u>	11
---	----

<u>Issue 1c Reply Argument Regarding the Rejection of Dependent Claims 3, 6, 9, and 16: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Generating a Display of an Online Interactive Prompt Comprising a Simultaneous Cross-Comparison of Shipping Rates For Each Delivery Service Offered by Each Carrier That Would Deliver a Particular Parcel</u>	15
--	----

<u>Issue 1d Reply Argument Regarding the Rejection of Independent Claim 10 and by virtue of their dependency on Claim 10, Dependent Claims 11, 12, 13, 19, 20 and 21: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Determining Delivery Schedules Comprising Delivery Dates and Times</u>	16
--	----

<u>Issue 1e Reply Argument Regarding the Rejection of Dependent Claims 19, 20 and 21: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Delivery Schedules Comprising Delivery Dates and Times</u>	18
--	----

CONCLUSION.....	19
-----------------	----

REPLY ARGUMENT

For the reasons described in more detail below, and for the authorities cited below, and for the reasons given and the authorities cited in the Appeal Brief, it is respectfully submitted that Claims 1, 4, 7, and 10 and dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23 are non-obvious over Thiel and FedEx, whether considered alone or in combination with any other reference(s) of record. Accordingly, it is respectfully requested that the rejection of independent Claims 1, 4, 7, and 10 and dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23 under 35 U.S.C. §103(a) be reversed.

Issue 1 Reply Argument Regarding the Rejection of Claims 1-13, 15-17 and 19-23 Under Section 103(a) as being Unpatentable over Thiel in view of FedEx: There is no Disclosure, Teaching or Suggestion Found in the Prior Art to Combine the FedEx and Thiel References.

The Appeal Brief respectfully submitted that there is no disclosure, teaching or suggestion found in the prior art, as required under MPEP §706.02(j) and MPEP §2143, to combine the FedEx and Thiel references.

In response to that position, the Examiner's Answer states the following underlying position to support the posited appropriateness of combining the two references, namely, that "FedEx ... teaches [a] respective delivery date and a respective delivery time for each service type for the carrier" Examiner's Answer, p. 14, Response to Appellant's Argument Regarding Issue 1. In further support of the posited appropriateness of combining the two references presented in the Examiner's Answer, the Examiner's Answer describes a hypothetical situation as an example that "... such as if the current date was 12/12/05, the shipment type 'priority overnight' would give the delivery date of 12/13/05 with the delivery time of 10:30." Examiner's Answer, p. 14, Response to Appellant's Argument Regarding Issue 1.

With respect to the hypothetical situation described by the Examiner's Answer in support of the above-outlined position taken by the Examiner's Answer, it is respectfully noted that nowhere in the FedEx reference is there any disclosure of a current date of

12/12/05, a "priority overnight" delivery date of 12/13/05, or a "priority overnight" delivery time of 10:30 for shipment of a particular package to a particular destination. Rather, it is respectfully submitted that FedEx merely describes general terms for the "FedEx Priority Overnight®" delivery service, not specific parameters for the delivery of a particular parcel shipped on a particular shipping date to a particular destination which in one way or another is the general subject matter of independent Claims 1, 4, 7 and 10.

Specifically, FedEx describes the "FedEx Priority Overnight®" delivery service as providing "[d]elivery by 10:30 a.m. the next business day to thousands of U.S. cities; by noon to most other areas; and by 4:30 p.m. to remote locations ... Maximum weight: 150 lbs. ...Up to 119" length, and 165" in length and girth combined ... Pickup and delivery Monday-Saturday". FedEx, p. 2. It is respectfully submitted that, as evidenced by the above-quoted citation, the FedEx reference generally describes only a typical relative day (e.g., Overnight, 2-Day, etc.) for delivery, not a delivery date, as claimed by independent Claims 1, 4, 7, and 10. It is further respectfully submitted that, as evidenced by the above-quoted citation, the FedEx reference describes in general terms, different relative times by which delivery may be expected for certain of its delivery services (e.g., the "FedEx Priority Overnight®" delivery service), according to a dependency on the particular destination for a particular shipment and according to the typical relative day for the particular delivery service ("... by 10:30 a.m. the next business day to thousands of U.S. cities; by noon to most other areas; and by 4:30 p.m. to remote locations ...") (FedEx, p. 2), but does not describe a delivery time for the delivery of a particular parcel shipped on a particular shipping date to a particular destination which in one way or another is the general subject matter of independent Claims 1, 4, 7 and 10.

It is respectfully asserted, for the following reasons and for the reasons given in more detail in the Appeal Brief, that a delivery schedule that comprises a delivery date and a delivery time as claimed in one way or another in each of independent Claims 1, 4, 7 and 10, is distinguished from the FedEx reference's general term description of a typical relative day (e.g., Overnight, 2-Day, etc.) for delivery. In particular, it is

respectfully submitted that the FedEx reference does not anywhere describe a particular delivery date for delivery of a particular parcel to a particular destination.

Rather, as explained in more detail in the Appeal Brief, a user wanting to determine a delivery date for a "FedEx Priority Overnight®" delivery service shipment of a particular parcel to a particular destination would need to refer to a calendar in order to ascertain the "next business day." Moreover, it is respectfully asserted that the Examiner's example that presents a hypothetical delivery date of "12/13/05" is evidence that the Examiner (mentally or physically) consulted a calendar to determine that the next business day following a hypothetical shipping date of "12/12/05" would be "12/13/05." Indeed, had a different hypothetical shipping date of "12/16/05" (a Friday) been selected, a hypothetical delivery date comprising the next business day of "12/19/05" (the Monday following the hypothetical 12/16/05 shipping date) would be indicated according to the FedEx reference's description. See, e.g., FedEx, p. 2 (stating that FedEx Standard Overnight® provides "pickup and delivery Monday-Friday; only pickup is available on Saturday.")

Further, it is respectfully asserted that determining a cross-comparison delivery schedule comprising "... a [respective] delivery date and a [respective] delivery time ...", as claimed in one way or another in each of independent Claims 1, 4, 7 and 10, is distinguished from the FedEx reference's destination-dependent description of different relative delivery times for a particular delivery service. That is, as explained in more detail in the Appeal Brief, a user wanting to determine a delivery time for a "FedEx Priority Overnight®" delivery service shipment of a particular parcel to a particular destination would need to determine whether the particular destination would be considered by FedEx® to be one of the "thousands of U.S. cities" for which delivery would be expected to occur by 10:30 am, or whether the particular destination would be considered by FedEx® to be in one of the "other areas" for which delivery would be expected to occur by noon, or whether the particular destination would be considered by FedEx® to be of the "remote locations" for which delivery would not be expected until 4:30 pm.

Notwithstanding the FedEx reference's description of a destination-dependency for determination of a delivery time, the Examiner's Answer's example asserts a particular delivery time, but does not assert an associated destination. It is respectfully asserted that the FedEx reference's description of a destination dependency for different relative times by which delivery may be expected is evidence that the Examiner's example is incomplete and inconclusive. Rather, a complete hypothetical example would indicate, among other things, a particular destination, and would include a determination, according to the particular destination and the rules of the particular carrier, a delivery time. Instead, contrary to the disclosure of the FedEx reference, it is respectfully submitted that the Examiner's Answer's example ignored the destination dependency for that carrier and assumed that all destinations would be one of the "thousands of U.S. cities" for which FedEx Standard Overnight® delivery would be expected to occur by 10:30 a.m.

In view of the above-outlined reasons, and for the reasons given and the authorities cited in the Appeal Brief, it is respectfully asserted that the above-outlined distinctions between the claimed limitations of independent claims 1, 4, 7 and 10 are evidence that the underlying presumption for combining the FedEx and Thiel references given in the Examiner's Answer that "FedEx ... teaches respective delivery date and a respective delivery time for each service type for the carrier ..." (Examiner's Answer, p. 14, Response to Appellant's Argument Regarding Issue 1) is unsupported. Accordingly, it is respectfully asserted that the FedEx and Thiel references were not properly combined.

In further response to the Appeal Brief position that there is no motivation to combine the FedEx and Thiel references, the Examiner's Answer posits that the necessary motivation to combine the references can be found in Thiel at column 10, lines 55-67 and column 11, lines 45-55. Examiner's Answer, p. 14, Response to Appellant's Argument Regarding Issue 1.

It is respectfully asserted that, when the above-cited references to Thiel are read in context with the rest of the disclosure of Thiel, the optimization discussed in Thiel

refers to an optimization of cost, not schedule. The first of the two above-cited references to Thiel discloses the following:

The availability of various carriers which compete for the same service order essentially complicate the selection process for the user. Various conditions must be taken into account, including the fee for shipping a certain item. It is therefore desirable for the franking machine to aid the user in the selection so as to achieve true savings in terms of proper and satisfactory shipping of the items. ... The franking machine must store the services and the fees of the various carriers in a comparable form. The following is exemplary of such a comparison ...

Thiel, col. 10, lines 55-67. The second of the two above-cited references to Thiel discloses the following:

In order not to disregard certain intangibles, a most preferred embodiment displays second (and third) choices as well so as to allow the user to come to his own conclusion and choice. The user may have less rational reasons (e.g. his/her familiarity with the service, the currently employed pick-up driver is particularly efficient, etc.) and he/she may wish to overrule the optimized recommendation and to opt for the second or third choice....

Thiel, col. 11, lines 45-55.

It is respectfully asserted that, when the above-cited references to Thiel are read in context with the disclosure of Thiel of a system, method and device for franking postal matter (applying postage to mail) (e.g., Thiel, Abstract) that provides a comparison and display of shipping costs (e.g., Thiel, col. 6, lines 53-55) by multiple carriers based on a user first selecting a "... class of mail (letter, reply postcard, printed matter, second-class letter, parcel, etc.), [and] the type of shipment (declaration of value, registered, mailing by a private individual, return receipt requested, C.O.D., express mail, air mail, priority mail, general delivery, etc.) ..." (e.g., Thiel, col. 8, lines 58-66), it is clear that the optimization discussed in the above-cited references to Thiel refers to an optimization of cost, not schedule. For the reasons described in more detail in the Appeal Brief, it is accordingly respectfully submitted that Thiel does not disclose determination or display

of any schedule that comprises a delivery date and a delivery time as claimed in one way or another by independent Claims 1, 4, 7 and 10.

For the reasons given above and in the Appeal Brief, it is respectfully submitted that there is no disclosure, teaching or suggestion in either FedEx or Thiel to combine the mere listing and explanation of delivery services in FedEx with the postal franking device, system and method of Thiel. Yet further, for the reasons given above and in the Appeal Brief, it is respectfully submitted that there is no disclosure, teaching or suggestion in Thiel to combine the postal franking device, system and method of Thiel with a mere listing and explanation of delivery services such as provided in FedEx. Accordingly, it is respectfully requested that the rejection of independent Claims 1, 4, 7, and 10 and dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23 under 35 U.S.C. §103(a) be reversed.

Moreover, even assuming for the sake of argument that the prior art suggests or otherwise provides a motivation for combining the FedEx and Thiel references as required by MPEP §706.02(j) and MPEP §2143, for the reasons and authorities given below and in the Appeal Brief, it is respectfully submitted that neither Thiel nor FedEx, whether considered alone or in combination with any other reference(s) of record, discloses, anticipates, teaches or suggests all of the limitations of independent Claims 1, 4, 7, or 10, or, of dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23, as required for an obviousness rejection under 35 U.S.C. Section 103(a), MPEP §§706.02(j) and MPEP §2143.

Issue 1a Reply Argument Regarding the Rejection of Independent Claims 1, 4, and 7, and Dependent Claims 17, 22 and 23 Under Section 103(a) as Being Unpatentable over Thiel in view of FedEx: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Determining a Cross-Comparison Delivery Schedule Comprising Delivery Schedules for Each Service for Each Carrier Wherein Each Delivery Schedule Comprises a Delivery Date and a Delivery Time

The Appeal Brief respectfully asserted that, as compared to the requirements for an obviousness rejection under 35 U.S.C. Section 103(a), as those requirements are explained in MPEP §§706.02(j) and MPEP §2143, neither *Thiel* nor *FedEx* disclose a cross-comparison delivery schedule, or determining such a cross-comparison delivery schedule, as recited in independent Claims 1, 4, and 7.

In response to that position, the Examiner's Answer cites column 11, lines 1-25 of *Thiel* and posits that "Thiel specifically discloses a cross comparison delivery schedule in the comparison table that lists different carriers" *Examiner's Answer*, p. 14, Response to Appellant's Argument Regarding Issue 1a (Described by the Examiner as "Argument 2"). In support of the above-outlined position presented in the Examiner's Answer, the Examiner's Answer posits a broad interpretation of the term "schedule." *Examiner's Answer*, p. 15, Response to Appellant's Argument Regarding Issue 1a (Described by the Examiner as "Argument 2").

It is respectfully asserted that the broad interpretation posited by the Examiner's Answer of the term "schedule" ignores the limitations of the claims that expressly recite that a delivery schedule "compris[es] a respective delivery date and a respective delivery time." Claims 1, 4, and 7 (and 10) of the present application.

Further, for the reasons given below and in more detail in the Appeal Brief, it is respectfully submitted that the citation by the Examiner's Answer to column 11, lines 1-25 of *Thiel* fails to support the Examiner's position in that the values in the cited table (at *Thiel*, col. 11, lines 1-12) are not determined (as recited by Claims 1, 4 and 7) by *Thiel*, but rather, as is explained at column 10, lines 65-67 of *Thiel*, are elements of a stored table that is used by the franking machine of *Thiel* to calculate a price for shipping a

parcel and to perform a fee optimization (see, e.g., Thiel, col. 11, lines 27-45 (calculating “B3+R3–D3=P3” and “B5+R5–D5=P5,” describing P3 and P5 as the summed shipping fees, and explaining that “[t]he summed shipping fees (P3 and P5) are compared and the smaller amount (Pmin) is suggested as the optimal carrier”).

Moreover, even assuming for the sake of argument only that the values in the table at column 11, lines 1-13 of Thiel are determined by a Thiel franking machine, it is respectfully submitted that the column 11 Thiel table does not comprise any delivery date or any delivery time as claimed in independent Claims 1, 4, and 7 (and 10). Rather, for the reasons given in more detail in the Appeal Brief, it is respectfully asserted that the column 11 Thiel table indicates a particular service type, e.g., “Express Delivery,” that may be selected by a user. See, e.g., Thiel, col. 9, lines 1-3 (specifying that “[o]nce the weight and the type of mail and shipment form of the mail have been entered, the postage corresponding to the zones can be found automatically.”). See also, e.g., Thiel, col. 11, lines 15-23 (explaining that the stored Thiel table is used to perform a mask search *after* the user has already “defined the required services”: “The user of the franking machine first defines the required services. This is done by entering the date with regard to the ship-to zone (the destination zone) and the desired additional services such as express delivery (E), return receipt (R), etc. ... In a first selection process, a mask (a first step selection) searches the carriers which offer the desired services.”).

Further, as compared to the FedEx reference that indicates a typical relative day for delivery for each particular service, it is respectfully submitted that the listing by the column 11 Thiel table of the “Express Delivery” service does not even distinguish whether a schedule of delivery for an “Express Delivery” would be viewed the same, or differently, by Carriers 1-5. See Thiel, col. 11, lines 1-12.

For the above-given reasons and authorities, and for the reasons given and the authorities cited in the Appeal Brief, it is respectfully asserted that the cited Thiel and FedEx references do not disclose, anticipate, teach or suggest, even when combined, all of the limitations recited by independent Claims 1, 4 and 7, and by virtue of their dependency on independent Claims 1, 4, and 7, dependent Claims 2, 3, 5, 6, 8, 9, 15,

16, 17, 22 and 23. Accordingly, it is respectfully requested that the rejection of Claims 1, 4 and 7 and dependent Claims 2, 3, 5, 6, 8, 9, 15, 16, 17, 22 and 23 be reversed.

Issue 1b Reply Argument Regarding the Rejection of Dependent Claims 2, 5, 8, and 15: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Calculating a Shipping Rate for Each Delivery Service Offered by Each Carrier to Ship a Particular Parcel

As described in some detail in the Appeal Brief, it is respectfully asserted that there are additional grounds for reversing the rejection of dependent Claims 2, 5, 8 and 15 in that neither Thiel nor FedEx disclose "calculat[ing] a respective shipping rate" for "each ... particular delivery service" "offered by each ... carrier" "to ship" (Claim 2), "for the respective shipment" (Claims 5 and 8), or "for delivering" (Claim 15) a parcel.

In response to that position, the Examiner's Answer cites, among others, the above-discussed column 11 Thiel table (citing Thiel, col. 10, line 65 – col. 11, line 25), and states that "Thiel discloses calculating a respective shipping rate for each said respective particular delivery service to ship the particular respective parcel" Examiner's Answer, p. 17, Response to Appellant's Argument Regarding Issue 1b (Described by the Examiner as "Argument 5"). Even though the Examiner's Answer posits that Thiel discloses calculating a shipping rate for each delivery service to ship a parcel, the Examiner's Answer concludes that "Thiel ... shows the fees associated with each carrier ..." (Examiner's Answer, p. 17, Response to Appellant's Argument Regarding Issue 1b (Described by the Examiner as "Argument 5")), not with each service.

In comparing the cited column 11 Thiel table to both the features attributed to it in the Office Action and the Examiner's Answer, and more importantly, to the claimed subject matter of dependent Claims 2, 5, 8 and 15, it is respectfully asserted that the contents of the cited column 11 Thiel table and the description by Thiel of the use of the cited column 11 Thiel table are instructive.

At first glance, the cited column 11 Thiel table may appear to provide a table of shipping rates. However, it is respectfully submitted that under close inspection, the

cited column 11 Thiel table provides a *stored*, not calculated (as claimed in one way or another by dependent Claims 2, 5, 8 and 15), table of base rate components, not of calculated shipping rates (as claimed in one way or another by dependent Claims 2, 5, 8 and 15).

More specifically, the cited column 11 Thiel table identifies entries for five carriers, namely, Carrier 1 – Carrier 5. For each Carrier, the column 11 Thiel table shows an entry for “Destination Zone”, “Base Charge (B)”, “Express Delivery”, Express Delivery “Added Charge (E)”, “Return Receipt Added Charge (R)”, and “Discount (D)” for greater than 100 items, greater than 1,000 items, and greater than 10,000 items. Entries for “Destination Zone” comprise an indication as to whether the Carrier would support shipment to Destination Zones “A”, “B” and/or “C.” See, e.g., Thiel, col. 11, lines 15-26. Entries for “Express Delivery” show a “-” to indicate that the relevant carrier does not support Express Delivery; or show a “+” to indicate that the relevant Carrier does support Express Delivery. See, e.g., Thiel, col. 11, lines 15-26. For each Carrier, an entry for “Base Charge (B)” indicates a base fee for an item of base weight and base dimensions. See, e.g., Thiel, col. 11, lines 38-39. For each Carrier that supports Express Delivery (with an entry of “+”), an Express Delivery “Added Charge (E)” entry reflects an added charge for using Express Delivery for a base-fee item. Cf, e.g., Thiel, col. 11, lines 15-26. For each Carrier that supports return Receipt, a “Return Receipt Added Charge (R)” entry reflects an added charge for requesting a Return Receipt for a base-fee item. See, e.g., Thiel, col. 11, lines 15-26.

In reply to the Examiner’s Answer concerning Thiel calculations, it is respectfully submitted that the entries of the column 11 Thiel table are base fee components that may be used in calculating a shipping rate for a particular carrier of the five carriers (Carrier 1 – Carrier 5) to ship an item with base characteristics (base weight, base dimensions); it is respectfully submitted that the base fee components of the column 11 Thiel table are not themselves calculated by Thiel and do not pertain to any particular parcel or to the shipment of any particular parcel to any particular destination. Further, it is respectfully submitted that Thiel discloses calculating a shipping fee for each carrier (see, e.g., Thiel, col. 11, lines 1-45), but does not disclose calculating a shipping rate for

each delivery service offered by each carrier. Specifically, it is respectfully submitted that Thiel discloses calculating a shipping fee for each carrier that meets a user's requirements (including a user-pre-selection of a service, such as "Express") for shipping a parcel. See, e.g., Thiel, col. 11, lines 27-45 (calculating "B3+R3-D3=P3" and "B5+R5-D5=P5," describing P3 and P5 as the summed shipping fees [for Carriers 3 and 5 respectively], and explaining that "[t]he summed shipping fees (P3 and P5) are compared and the smaller amount (Pmin) is suggested as the optimal carrier").

In further reply to the above-outlined position taken in the Examiner's Answer (that "Thiel discloses calculating a respective shipping rate for each said respective particular delivery service to ship the particular respective parcel"), it is respectfully asserted, for the reasons given below, that the Examiner's Answer misinterprets the claimed "delivery service" limitations of Claims 2, 5, 8 and 15. Specifically, it appears that the Examiner's Answer in response to Issue 1b equates the claimed limitation of a "delivery service" to not only the various service levels, but also to various service options listed in the column 11 Thiel table, including not only "Express Delivery" but also, for example, "Return Receipt," and "Discount."

It is respectfully asserted that such an interpretation is not only inappropriate for the claimed limitations, but is inconsistent with other sections of the Examiner's Answer that compare characteristics of the listings of various "shipment types" offered by FedEx® in the FedEx reference (such as, for example, "FedEx Priority Overnight®," "FedEx Standard Overnight®," and "FedEx 2Day®") with claimed limitations regarding "delivery services." See, e.g., Examiner's Answer, p. 14, Response to Appellant's Argument Regarding Issue 1 (Described by the Examiner as "Argument 1") (taking the position that "FedEx discloses a listing showing ... [a] respective delivery date and a respective delivery time for each service type [of express mail, priority, etc.]").

As compared to various service options that are ancillary to various delivery services, it is respectfully asserted that the claimed "delivery service" limitation is properly interpreted to mean the various delivery services offered by the various carriers, such as, for example, FedEx®'s "FedEx Priority Overnight®," "FedEx Standard Overnight®," and "FedEx 2Day®," for shipping and delivering (e.g., "to ship" as recited

in Claim 2; “for the respective shipment” as recited in Claims 5 and 8, and “for delivering” as recited by Claim 15) a parcel. It is respectfully asserted that it is proper to construe the claimed “delivery service” limitations in light of the claim language as well as the Specification. See, e.g., Markman v. Westview Instruments, Inc., 52 F.3d 967, 979, 34 U.S.P.Q.2D (BNA) 1321, 1329 (Fed. Cir. 1995) (*in banc*), *aff’d*, 517 U.S. 370 (1996) (“To ascertain the meaning of claims, we consider three sources: The claims, the specification, and the prosecution history.” (citations omitted)).

It is respectfully asserted that the claim language supports the interpretation of the claimed “delivery service” limitation to mean the various delivery services offered by the various carriers, such as, for example, FedEx®’s “FedEx Priority Overnight®,” “FedEx Standard Overnight®,” and “FedEx 2Day®,” for shipping and delivering a parcel. For example, Claim 2 recites the limitations that a shipping rate is calculated “...for each ... delivery service *to ship* the particular respective parcel” It is respectfully asserted that a delivery service such as, for example, “FedEx Priority Overnight®,” would be used “to ship” a parcel; whereas a service option such as providing a return receipt would be ancillary to delivery of the parcel.

The Specification of the present application further supports the above-outlined distinction between delivery services offered by carriers and service options that are ancillary to delivery services. For example, the Specification describes FIG. 28 as a “... Service Options Screen [that] provides for Shipper input of Service Option Selections The Service Options supported in the depicted embodiment are: 1) Loss Protection (Declared Value) 1076; 2) E-Mail Delivery Notification 1083; 3) Verbal Delivery Confirmation 1085; 4) ‘Service must be guaranteed’ 1086; 5) ‘Destination is a Residence’ 1087; and 6) ‘Signature not Required’ 1088.” Specification, p. 34, line 26 – p. 35, line 2.

In view of the above-outlined interpretation of the claimed “delivery service” limitations, it is therefore respectfully asserted that Thiel fails to disclose calculating a shipping rate for each delivery service offered by each carrier that would deliver a parcel which is the subject matter of Claims 2, 5, 8 and 15.

In view of the absence in Thiel of calculating a shipping rate for each delivery service offered by each carrier that would delivery a parcel, for the above-given reasons and the above-cited authorities, and for the reasons given and the authorities cited in the Appeal Brief, it is respectfully submitted that the cited Thiel and FedEx references do not disclose, anticipate, teach or suggest, even when combined, all of the limitations recited by dependent Claims 2, 5, 8 and 15. Accordingly, it is respectfully requested that the rejection of dependent Claims 2, 5, 8, and 15 be reversed.

Issue 1c Reply Argument Regarding the Rejection of Dependent Claims 3, 6, 9, and 16: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Generating a Display of an Online Interactive Prompt Comprising a Simultaneous Cross-Comparison of Shipping Rates For Each Delivery Service Offered by Each Carrier That Would Deliver a Particular Parcel

The Appeal Brief respectfully asserted that Thiel does not disclose, anticipate, teach or suggest "...generat[ing] a display of an online interactive prompt ... comprising a simultaneous cross-comparison of said respective shipping rates ..." because, for the reasons previously given above and for reasons given in the Appeal Brief, Thiel does not disclose the above-described limitations of dependent Claims 2, 5, 8 and 15 of calculating a shipping rate for each respective particular delivery service of the plurality of delivery services offered by each respective particular carrier of the plurality of carriers that would deliver the particular respective parcel to ship a particular respective parcel according to the respective service-specific, carrier-specific delivery schedule.

In response to the above-outlined argument, the Examiner's Answer again cites the column 11 Thiel table to support that proposition "wherein a display shows a cross comparison of multiple carriers by plans, charges, and types." Examiner's Answer, p. 17, Response to Appellant's Argument Regarding Issue 1c (Described by the Examiner as "Argument 6").

For the reasons previously given above, and for the reasons given in the Appeal Brief, as compared to supporting the position that Thiel discloses displaying a cross-

comparison of calculated shipping rates, it is respectfully submitted that the column 11 Thiel table is a stored table of shipping fee calculation components, not of calculated shipping rates. See, e.g., Thiel, col. 10, lines 65-67 (explaining that the table that appears at column 11, lines 1-12 of Thiel, is a stored table); Thiel, col. 11, lines 15-45 (explaining that the values depicted in the table that appears at column 11, lines 1-12 of Thiel is used by the franking machine of Thiel to calculate a price for shipping a parcel and to perform a fee optimization). Further, it is respectfully submitted that, for the reasons previously given above, and for the reasons given in the Appeal Brief, as compared to supporting the position that Thiel discloses displaying a cross-comparison of calculated shipping rates, it is respectfully submitted that the column 11 Thiel table is a stored table of shipping fee calculation components, and is not displayed.

In view of the absence in Thiel of a display of a cross-comparison of shipping rates for each delivery service offered by each carrier that would deliver the particular respective parcel, for the above-given reasons and authorities and for the reasons given and the authorities cited in the Appeal Brief, it is respectfully asserted that the cited Thiel and FedEx references do not disclose, anticipate, teach or suggest, even when combined, all of the limitations recited by dependent Claims 3, 6, 9 and 16. Accordingly, it is respectfully requested that the rejection of dependent Claims 3, 6, 9 and 16 be reversed.

Issue 1d Reply Argument Regarding the Rejection of Independent Claim 10 and by virtue of their dependency on Claim 10, Dependent Claims 11, 12, 13, 19, 20 and 21: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Determining Delivery Schedules Comprising Delivery Dates and Times

The Appeal Brief respectfully asserted, for reasons and authorities similar to those described regarding Claims 1, 4, and 7, that neither Thiel nor FedEx, whether considered alone or in combination with any other reference(s) of record, discloses, anticipates, teaches or suggests all of the limitations of independent Claim 10. Specifically, independent Claim 10 recites "... determining a first set of delivery

schedules ...[for a] first carrier ... each one of said first set of delivery schedules ... comprising a delivery date and a delivery time ...determining a second set of delivery schedules ... [for a] second carrier ... each one of said second set of delivery schedules ... comprising a delivery date and a delivery time ... displaying to the user said first set of delivery schedules ... and ... simultaneously displaying to the user said second set of delivery schedules...".

In response to that position, the Examiner's Answer again cites column 11, lines 1-25 of Thiel and posits that "Thiel specifically discloses a cross comparison delivery schedule in the comparison table that lists different carriers" Examiner's Answer, p. 14, Response to Appellant's Argument Regarding Issue 1a (Described by the Examiner as "Argument 2"). In support of the above-outlined position presented in the Examiner's Answer, the Examiner's Answer posits a broad interpretation of the term "schedule." Examiner's Answer, p. 15, Response to Appellant's Argument Regarding Issue 1a (Described by the Examiner as "Argument 2").

It is respectfully asserted that the broad interpretation posited by the Examiner's Answer of the term "schedule" ignores the limitations of the claims that expressly recite that a delivery schedules "compris[es] a respective delivery date and a respective delivery time." Claim 10 of the present application.

For reasons similar to those given previously above and in the Appeal Brief with respect to the rejection of Claims 1, 4 and 7 and with respect to the rejection of Claims 3, 6 and 9, it is respectfully asserted that neither the Thiel nor the FedEx references disclose determining, or generating a display of, delivery schedules comprising delivery dates and times, as claimed in independent Claim 10.

It is therefore respectfully asserted that the cited Thiel and FedEx references do not disclose, anticipate, teach or suggest, even when combined, all of the limitations recited by independent Claim 10. Further, by virtue of their dependency on the limitations of independent Claim 10, it is respectfully asserted that the cited Thiel and FedEx references do not disclose, anticipate, teach or suggest, even when combined, all of the limitations recited by dependent Claims 11, 12, 13, 19, 20 and 21.

Accordingly, it is respectfully requested that the rejection of independent Claim 10 be reversed. Further, by virtue of their dependency on Claim 10, it is respectfully requested that the rejection of dependent Claims 11, 12, 13, 19, 20 and 21 be reversed.

Issue 1e Reply Argument Regarding the Rejection of Dependent Claims 19, 20 and 21: None of the References of Record, including Thiel and FedEx, Disclose, Anticipate, Teach or Suggest Delivery Schedules Comprising Delivery Dates and Times

The Appeal Brief respectfully asserted that, similar to the reasons and authorities previously given in the Appeal Brief with respect to independent Claims 1, 4 and 7, Thiel and the stored column 11 Thiel table do not disclose the limitations of dependent Claims 19, 20 and 21 which recite delivery schedules for first and second shipment types for a first and second carrier.

In response to the above-outlined assertion, the Examiner's Answer once again cites the stored column 11 Thiel table to support the proposition that "...Thiel discloses comparing multiple carriers across multiple services ... where each carrier offers multiple services (express delivery, bulk discounts, return receipt, etc.)." Examiner's Answer, p. 17, Response to Appellant's Argument Regarding Issue 1e (Described by the Examiner as "Argument 7").

For reasons similar to the above-given reasons and the reasons given in the Appeal Brief regarding the rejection of Claims 1, 4, 7, and 10, it is respectfully asserted that Thiel, including the stored column 11 Thiel table, does not disclose delivery schedules for first and second shipment types for a first and second carrier, where the delivery schedules (according to Claim 10 on which Claims 19, 20 and 21 depend) comprise delivery dates and delivery times.

For the above-given reasons, it is respectfully submitted that the cited Thiel reference does not disclose, anticipate, teach or suggest, even when combined with any other reference of record, all of the limitations recited by dependent Claims 19, 20 and 21. Accordingly, it is respectfully requested that the rejection of dependent Claims 19, 20 and 21 be reversed.

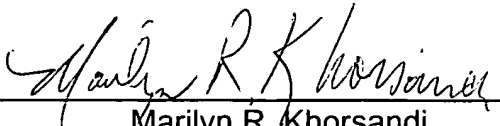
CONCLUSION

For the reasons given and the authorities cited above, and for the reasons given and the authorities cited in the Appeal Brief, it is respectfully submitted that there is no disclosure, teaching or suggestion found in the prior art, as required under MPEP §706.02(j) and MPEP §2143, to combine the FedEx and Thiel references. Therefore, it is respectfully requested that the rejection of independent Claims 1, 4, 7, and 10 and dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23 be reversed.

Moreover, because, for the foregoing reasons and authorities, and for the reasons and authorities given in the Appeal Brief, neither Thiel nor FedEx, whether considered alone or in combination with any other reference(s) of record, anticipate, disclose, teach or suggest all of the limitations of independent Claims 1, 4, 7, and 10, or of dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23 of the present application, it is respectfully asserted that: 1.) the obviousness rejection of the Claims failed to comply with the requirements for an obviousness rejection under 35 U.S.C. Section 103(a), as explained in MPEP §§706.02(j) and MPEP §2143; 2.) Claims 1, 4, 7, and 10 and dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23 are non-obvious in view of Thiel and FedEx, whether considered alone or in combination with any other reference(s) of record; and 3.) the invention disclosed and claimed in the present application is not fairly taught by any of the references of record, taken either alone or in combination, and that the application is in condition for allowance. Accordingly, it is respectfully requested that the rejection of independent Claims 1, 4, 7, and 10, and dependent Claims 2-3, 5-6, 8-9, 11-13, 15-17, and 19-23, be reversed.

Respectfully submitted,

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